

REMARKS

In section 5 of the Office Action, the Examiner objected to claims 6, 7, and 28. Suitable amendments have been made to overcome this objection.

In sections 6 and 7 of the Office Action, the Examiner rejected claims 1, 32, and 45 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Specifically, the Examiner first asserts that, because the content recipient must start up a network enabled device, the initiation of a request for the posted content cannot be automatic, i.e., without user intervention.

These claims have been amended to make it clear that automatic operation does not begin until the network enabled device is turned on by the content recipient. (This amendment is fully supported by paragraph 0026 of the present application.) Accordingly, these claims comply with the written description requirement in that they reflect the written description provided in paragraph 0026 and in other paragraphs of the published application.

Moreover, since "without user intervention" means "automatic," and since applicants have described in

the specification that the process of retrieving the note 22 from the content provider is automatic, the written description more than adequately describes the automatic (i.e., without user intervention) retrieval by a content recipient of content from a content provider.

The Examiner then asserts that, according to paragraph 0026, the user must manually select the content provider to which the request for content is sent. However, this assertion is not correct. Paragraph 0026 states that execution the program 60 is automatically initiated when the network enabled device is started. Accordingly, identifying the content provider, which is part of the program 60, is also automatic. Paragraph 0026 does state, as an example, that, at some time during an execution of the program, the user can manually enter the identities of the content providers. However, as is clear from paragraph 0026, this manual entry need only be done once and, thereafter, selection of the content provider is automatic.

Paragraph 0026 also discloses that even this manual identification need not be required because downloading of the program 60 to the content recipient can include the identity of the contract provider. Thus, if the downloading of the program 60 to the content

recipient can include the identity of the contract provider, then automatic initiation of a request for posted content does not require the user to manually identify the content provider.

Accordingly, claims 1, 32, and 45 fully comply with the written description requirement of 35 U.S.C. §112, first paragraph.

In section 8 of the Office Action, the Examiner rejected claim 18 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner contends that the specification does not describe receiving only a graphical element without receiving the whole web page to which the graphical element is associated.

However, as disclosed in paragraph 0026 of the published application, the program 60 queries the content provider for any new content, i.e., a note such as the note 22, that has been posted on the content provider's web page 20.

Paragraph 0029 of the published application then discloses that a check is made to determine whether the content recipient's network enabled device has the software necessary to display the note 22. If not, the content display software is downloaded to the content

recipient. Such a check and download would not be necessary of the content recipient's network enabled device downloaded the entire web page 20.

Paragraph 0030 discloses that the newly posted content of interest is downloaded. Because, as disclosed in paragraph 0026, the newly posted content is the note 22 that is posted to the web page 20, it is clear and unambiguous that it is the newly posted note 22 and not the web page 20 that is downloaded to, and received by, the content recipient.

Moreover, web pages are routinely displayed as part of their download. Therefore, if the note 22 were not downloaded separately from the web page 20, the note 22 would be displayed with the web page 20 so that there would be no need to notify the content recipient of receipt of the note 22. However, as disclosed in paragraph 0035 of the published application, the first and/or second portion 82_a and/or 82_b of the notifier 82 may be made to flash in order to indicate that the note 22 has been received and has not been opened by the content recipient. Therefore, because the content recipient is notified of the download of the note 22, it is clear that the note 22 is downloaded separately from the web page.

Furthermore, as disclosed in paragraph 0037 of the published application, the note 22 is displayed within a burn-through portion of the window 92. Again, it is the note 22 and not the web page 20 that is displayed on the content recipient's machine. Since such a burn-through display would be unnecessary if the whole web page 20 were downloaded, it is clear that the note 22 is downloaded to the content recipient's machine separately from the web page 20.

Also, as disclosed in paragraph 0042, the block 112 of the program 110 receives the new content request from a content recipient, and this new content may be in the form of the note 22. As can be seen, the request is for the note 22, not for the web page 20. Thus, only the note 22 is downloaded.

As can be seen from these paragraphs as well as a plethora of other paragraphs of the published application, claim 18 complies with the written description requirement of 35 U.S.C. §112, first paragraph.

In section 9 of the Office Action, the Examiner rejected claims 46, 47, and 48 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner contends that the

specification does not describe performing the method of automatically downloading content without providing an e-mail address of the content recipient to the content provider.

However, the Examiner's attention is directed to paragraph 0047 of the published application which discloses that the new content request contains a unique identification of the content recipient's network enabled device, and that this identification need not, and preferably does not, identify the content recipient. Accordingly, this identification cannot be an e-mail address because an e-mail address identifies the content recipient.

Moreover, the Examiner's attention is further directed to paragraph 0054 of the published application which discloses that the content recipient can receive the note 22 without the need for the content recipient to provide his or her identity to the content provider, that the privacy of the content recipient is assured, that the content provider cannot disclose the content recipient's identity to others such as other content providers, and that if the content recipient no longer wishes to receive notes, the content recipient need only deactivate the program 60.

Deactivating the program 60 would not stop e-mail. Therefore, since the content provider can no longer download the note to the content recipient if the program 60 is deactivated, the content provider has not been provided with the e-mail address of the content recipient. Otherwise, the content provider could e-mail the note 22 to the content recipient instead of relying on the programs 60 and 110.

As can be seen from these paragraphs, claims 46, 47, and 48 comply with the written description requirement of 35 U.S.C. §112, first paragraph.

In sections 10-22 of the Office Action, the Examiner rejected claim 1-4, 6-9, 17, 43, and 46 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Ballard.

Applicants' Argument - Neither Apfel nor Ballard discloses a content recipient that both automatically initiates a request for posted content and automatically receives that posted content.

In Figure 4A, Apfel discloses a block 409 that requires a manually initiated request for an update; and, in Figure 4B, Apfel discloses a block 439 that requires a manually initiated download of the update.

Apfel does state at column 11, lines 49-59 that, alternatively, the request may be initiated entirely in the background without a dialog box being displayed to the user. This portion further indicates that an HTTP query may automatically be initiated in the background, and that, if the query fails, there will be no action and the user will not even know that the query had been initiated. Finally, this portion indicates that, if the query is successful such that a new version is available, the user will be then prompted to apply the update.

In other words, the block 409 in Figure 4A may be dispensed with in this alternative, but the block 439 in Figure 4B is retained. Accordingly, although the initiation of the request is automatic, the receipt is still manual.

As to Ballard, the entire search is manual rather than automatic.

Accordingly, because neither Apfel nor Ballard discloses a content recipient that both automatically initiates a request for posted content and automatically receives that posted content as required by independent claim 1, one of ordinary skill in the art would not have

combined Apfel and Ballard so as to produce the invention of independent claim 1.

For this reason, independent claim 1 is not unpatentable over Apfel in view of Ballard.

Moreover, Apfel describes downloading software updates to a user's computer. These software updates are executable code. No one at the time of the present invention or even today downloads executable code without giving the user the choice as to whether the user wants to complete the download. Therefore, assuming that the user's computer is configured to automatically initiate a software download as argued by the Examiner, those skilled in the art will recognize that the final manual check of block 439 (Apfel; Figure 4B) should still be retained to prevent the user's computer from automatically downloading executed software (such as a virus) that could injure the computer and/or the user.

Accordingly, Apfel does not suggest automatic download of the updates and, in fact, suggests just the opposite.

Accordingly, one skilled in the art would not have been led to the inventions of independent claim 1 by Apfel and instead would have been led away from the invention of independent claim 1.

For this further reason, independent claim 1 is not unpatentable over Apfel in view of Ballard.

Additionally, independent claim 1 recites that posted content, which is automatically requested and automatically received, is visually displayed in response to user action. Neither the software in Apfel nor the songs in Ballard are visually displayed.

Accordingly, one skilled in the art would not have been led to the invention of independent claim 1 by Apfel and Ballard.

For yet this further reason, independent claim 1 is not unpatentable over Apfel in view of Ballard.

In section 3 of the Office Action, the Examiner asserts that the words "without user intervention" is a further limitation on the automatic operations of independent claim 1. However, the words "without user intervention" is not a further limitation on the automatic process of independent claim 1. Indeed, if anything, the words "without user intervention" are redundant because an operation without user intervention is an automatic operation.

The words "without user intervention" were merely inserted into independent claim 1 because applicants were concerned that, when applicants provided

in independent claim 1 that the initiation of the request for posted content, the receipt of the posted content, and the display of the notice were all automatic operations, the Examiner was not certain that applicants really meant these operations to be automatic. By amending independent claim 1, applicants were merely asserting that they did indeed mean for these operations to be automatic.

The Examiner further asserts that applicants have failed to show that the software download operation as described in Apfel is not automatic. However, since the software download operation requires a manual input at least at block 439 in Figure 4B of Apfel, the software download operation cannot be automatic.

Therefore, since Ballard likewise does not disclose automatically initiating a request for the posted content, automatically receiving the posted content, and automatically displaying a notice that the posted content has been received, one of ordinary skill in art would not have been led by Apfel and Ballard to the invention of independent claim 1.

The Examiner also asserts that applicants have failed to show where there is support in the specification for the words "without user intervention."

However, as explained above, "without user intervention" is fully supported by the written description of the present application.

The Examiner additionally asserts that "without user intervention" is a negative limitation. However, since an operation without user intervention means the same thing as an automatic operation, the Examiner's assertion must mean that automatic is a negative limitation. Because automatic is clearly not a negative limitation, neither is "without user intervention" a negative limitation.

Moreover, since as shown above "without user intervention" has a clear basis in the written description of the present application, this term is fully acceptable.

In sections 23-26 of the Office Action, the Examiner rejected claims 12, 13, 15, and 16 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Ballard and further in view of Stephens.

Stephens does not make up for the deficiencies of Apfel and Ballard with regard to independent claim 1. Therefore, independent claim 1 is patentable over Apfel in view of Ballard and further in view of Stephens. Because independent claim 1 is patentable over Apfel in

view of Ballard and further in view of Stephens,
dependent claims 12, 13, 15, and 16 are *per force*
patentable over Apfel in view of Ballard and further in
view of Stephens.

In section 27 of the Office Action, the
Examiner rejected claim 14 under 35 U.S.C. §103(a) as
being unpatentable over Apfel in view of Ballard and
further in view of Stephens and still further in view of
Beyda.

Beyda does not make up for the deficiencies of
Apfel, Ballard, and Stephens with regard to independent
claim 1. Therefore, independent claim 1 is patentable
over Apfel in view of Ballard and further in view of
Stephens and still further in view of Beyda. Because
independent claim 1 is patentable over Apfel in view of
Ballard and further in view of Stephens and still further
in view of Beyda, dependent claim 14 is *per force*
patentable over Apfel in view of Ballard and further in
view of Stephens and still further in view of Beyda.

In sections 29-38 of the Office Action, the
Examiner rejected claims 18, 19, 26, 28-31, 44, and 47
under 35 U.S.C. §103(a) as being unpatentable over Apfel
in view of Crill.

Independent claim 18 is directed to automatically initiating a request to a content provider's computer for download of not previously received viewable software posted note content available from the content provider, and receiving from the content provider's computer the not previously received viewable software posted note content in response to the request.

Apfel does not relate to viewable software posted note content.

Crill describes a process 100 for searching databases for a reference image, for comparing a candidate image retrieved from the databases to the reference image using optical correlation, and for providing the results of the optical correlation to the user. The candidate image and the reference image may represent software files, text files, music and sound files, graphics, etc.

At 102 of Figure 1, the user produces the reference image for which the user wants to search. At 104, the candidate image is retrieved. The candidate image may be located on or in an application server, a database server, a web site server, or other device. At 106, the candidate image is compared to the reference image. At 108, the result of the degree of correlation

between the candidate image and the reference image is provided to the user.

A network 200 as shown in Figure 2 includes a central computer 202 that is locally connected to database servers 204 and 205 on which images are stored. The central computer 202 is connected to other database servers 206 and 207 via a computer network 208. The central computer 202 is also connected to other local devices, such as an image storage device 210 and an optical correlation system 220, and to other remote devices, such as web sites 212, 214, 216, and 218.

The central computer 202 itself may function as a database server, a web site, or other device that is accessible via the computer network 208 from other servers and web sites, and from client devices such as a client device 222. Furthermore, a remote user is allowed access to the central computer 202 to perform some or all of the process 100.

At 102 of Figure 1, the user produces the reference image using either the central computer 202 or the client device 222. The user can produce the reference image using drawing, graphic, illustration, scanning, or other software resident on the central computer 202 or on the client device 222. The reference

image can vary by color, shape, size, texture, etc. To create a reference image at 102, a user is permitted to combine drawing and software tools. For example, the user can draw a circle by clicking on a drawing icon representing a circle. The user can then perform a click and drag operation on the circle so as to change the size of the circle. Alternatively, the reference image may be produced without user intervention.

At 104 of Figure 1, the central computer 202 retrieves the candidate image from the database servers 204, 205, 206, and/or 207 and/or from the image storage device 210. Alternatively, the central computer 202 retrieves the candidate image from one or more of the web sites 212, 214, 216, and 218 using a browser operating on the central computer 202.

Communication between the central computer 202 and a web site such as the web site 212 is possible as a result of the Transmission Control Protocol/Internet Protocol (TCP/IP), the File Transfer Protocol (FTP), the Hypertext Transfer Protocol (HTTP), and the Hypertext Mark-up Language (HTML). During such communication, HTML compliant web pages are retrieved from the web site(s). Therefore, the candidate image is retrieved from a web site at 104 for optical correlation to the reference

image produced at 102. For example, an HTML file that defines a web page may be retrieved from a web site, the HTML file may be searched for an image contained in the HTML file, and only the image can then be retrieved for correlation. The web page itself need not be displayed.

After a candidate image is retrieved at 104, the candidate image is optically correlated at 106 against the reference image produced at 102. The amount of correlation between the two images is provided to the user at 108.

As can be seen, Crill likewise does not relate to viewable software posted note content.

Therefore, the combination of Apfel and Crill would not have led one of ordinary skill in the art to the invention of independent claim 18. Therefore, independent claim 18 is not unpatentable over Apfel in view of Crill.

Because independent claim 18 is not unpatentable over Apfel in view of Crill, dependent claims 19, 26, 28-31, and 47 likewise are not unpatentable over Apfel in view of Crill.

In section 4 of the Office Action, the Examiner states that applicants' arguments are moot in view of the new ground of rejection. However, as applicants have

pointed out above, (i) the combination of Apfel and Crill in this new rejection does not teach the invention of independent claim 18, and (ii) one of ordinary skill in the art would not have combined Apfel and Crill for any purpose related to the invention of independent claim 18.

In this section, the Examiner also states that downloading a graphical element of a web page without downloading the rest of the web page lacks support in the application as originally filed. However, applicants have demonstrated above that only the note 22 and not the web page 20 is downloaded.

In this section, the Examiner further states that the limitation "without receiving the whole web page" is a negative limitation. However, the words "without receiving the whole web page" is not a further limitation on the receiving process of independent claim 18. Indeed, if anything, the words "without receiving the whole web page" are redundant because receiving a graphical element without receiving the whole web page is receiving only the graphical element.

The words "without receiving the whole web page" were merely inserted into independent claim 18 to emphasize that only the graphical element is received.

Moreover, as pointed out by 2173.05(i) of the MPEP, "there is nothing inherently ambiguous or uncertain about a negative limitation. So long as the boundaries of the patent protection sought are set forth definitely, albeit negatively, the claim complies with the requirements of 35 U.S.C. 112, second paragraph." Since independent claim 18 is easily understood, it complies with the requirements of 35 U.S.C. 112, second paragraph.

Accordingly, independent claim 18 and dependent claims 19, 26, 28-31, 44, and 47 are patentable over Apfel in view of Crill.

In sections 39-40 of the Office Action, the Examiner rejected claim 22 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Crill and further in view of Ballard.

Ballard does not make up for the deficiencies of Apfel and Crill with regard to independent claim 18. Therefore, independent claim 18 is patentable over Apfel in view of Crill and further in view of Ballard. Because independent claim 18 is patentable over Apfel in view of Crill and further in view of Ballard, dependent claim 22 is *per force* patentable over Apfel in view of Crill and further in view of Ballard.

In sections 41-44 of the Office Action, the Examiner rejected claims 20, 21, 24, and 25 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Crill and further in view of Stephens.

(Because independent claim 18 was rejected over Apfel in view of Crill, it is apparent that the Examiner has inadvertently omitted Crill from the rejection of claims 20, 21, 24, and 25. Therefore, applicants will treat this rejection as if it is also based on Crill.)

Stephens does not make up for the deficiencies of Apfel and Crill with regard to independent claim 18. Therefore, independent claim 18 is patentable over Apfel in view of Crill and further in view of Stephens. Because independent claim 18 is patentable over Apfel in view of Crill and further in view of Stephens, dependent claims 20, 21, 24, and 25 are *per force* patentable over Apfel in view of Crill and further in view of Stephens.

In section 45 of the Office Action, the Examiner rejected claim 23 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Crill and further in view of Beyda.

Beyda does not make up for the deficiencies of Apfel and Crill with regard to independent claim 18. Therefore, independent claim 18 is patentable over Apfel

in view of Crill and further in view of Beyda. Because independent claim 18 is patentable over Apfel in view of Crill and further in view of Beyda, dependent claim 23 is *per force* patentable over Apfel in view of Crill and further in view of Beyda.

In sections 46-54 of the Office Action, the Examiner rejected claims 32-34, 40, 41, 45, and 48 under 35 U.S.C. §102(b) as being anticipated by Apfel.

Independent claim 32 is directed to a method of executing first, second, and third program code and of electronically receiving the second program code at a content recipient. The first program code is executed at a content provider so as to post content for access by a content recipient. The second program code is executed at the content recipient following start up of the network enabled device so as to automatically, without user intervention, (i) access the content provider and (ii) initiate receipt by the content recipient of the posted content only if the posted content is new. The third program code is executed on the network enabled device at the content provider so as to send a message notifying the content recipient that the posted content is not new.

The Examiner asserts that Apfel at column 10, lines 61-63 discloses the feature of electronically receiving the second program code at the content recipient. This program code is executed at the content recipient and causes the automatic accessing of the content provider and the initiation of the receipt by the content recipient of the posted content if the posted content is new.

Column 10, lines 61-63 state that at 451, the package server 80b returns an executable upgrade package over the Internet to the computer 20 and the upgrade package is downloaded. The upgrade package typically includes the upgrade to the Web Authoring Components program module and a new date to be stored in the registry key. After the upgrade package is downloaded, the method proceeds to step 454.

This Web Authoring Components program module is the module 37a which is part of the word processor program module 37. Accordingly, the Web Authoring Components program module 37a is not the second program code of independent claim 32.

As can be seen, Apfel does not disclose here or anywhere that the second program code of independent claim 32 is electronically downloaded to the computer 20.

Therefore, Apfel does not anticipate independent claim 32.

Because Apfel does not anticipate independent claim 32, Apfel likewise does not anticipate dependent claims 33, 34, 40, 41, and 48.

Independent claim 45 is directed to a method of, after the network enabled device is started, executing first, second, and third program code. The first program code is executed at a content recipient so as to identify a content provider having posted content of interest to the content recipient. The second program code is executed at the content recipient so as to automatically, without user intervention, initiate a request for the posted content and to automatically, without user intervention, download the posted content if the posted content is new. The third program code is executed at the content recipient so as to receive a notice that the content provider has no new content to download to the content recipient.

Apfel in Figures 4A and 4B discloses that the user at 442 must select either to proceed with the download of the update or to terminate the update process entirely. Accordingly, this selection requires a manual

operation and, therefore, cannot be automatic contrary to the recitations in independent claim 45.

Even in the alternative proposed by Apfel in column 11, lines 49-59, the download is not automatic. Instead, the user is prompted to download the update. (The automatic application mentioned in this portion of Apfel merely relates to the automatic installation once the update is downloaded.) This prompting requires a manual selection on the part of the user such that the downloading of the update cannot be automatic.

The Examiner asserts that Apfel discloses the automatic features of independent claim 45 at column 6, line 63 through column 7, line 9 and at column 10, lines 48-63

Column 6, line 63 through column 7, line 9 states that, if an upgrade is available, the database server 80a sends back a response 105 that includes the URL of the upgrade package. After the computer 20 receives the response 105 including the URL of the upgrade package, the computer 20 sends a query 110 to the package server 80b at the URL of the update package. The package server 80b sends the update package 115 to the computer 20 and the computer 20 installs the update package 115.

However, as shown in Figure 4B, the computer 20 does not send the query 110 to the package server 80b until the user manually indicates at 442 that the query 110 should be sent.

This process is manual and not automatic.

Column 10, lines 48-63 state that, if at decision step 442 it is determined that the user did select to send the query 110, the query 110 is initiated at 448 and is sent by computer 20 to package server 80b to download the upgrade package. After the query 110 is initiated and sent at 448, the server 80b returns the upgrade package at 451.

Again, this process is manual because it requires the user to indicate at 442 that the query 110 should be sent. Accordingly, this process is not automatic.

As explained in applicants' previous response, Apfel describes downloading software updates to a user's computer. These software updates are executable code. No one at the time of the present invention or even today downloads executable code without giving the user the choice as to whether the user wants to complete the download. Therefore, assuming that the user's computer is configured to automatically initiate a software

download as argued by the Examiner, those skilled in the art will recognize that the final manual checks of blocks 439 and 442 (Apfel; Figure 4B) should still be retained to prevent the user's computer from automatically downloading executed software (such as a virus) that could injure the computer and/or the user.

Accordingly, one skilled in the art would not have been led to the invention of independent claim 45 by Apfel and instead would have been led away from the invention of independent claim 45.

Accordingly, independent claim 45 is not anticipated by Apfel.

In sections 55-59 of the Office Action, the Examiner rejected claims 36-39 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Stephens.

Stephens does not make up for the deficiencies of Apfel with regard to independent claim 32. Therefore, independent claim 32 is patentable over Apfel in view of Stephens. Because independent claim 32 is patentable over Apfel in view of Stephens, dependent claims 36-39 are *per force* patentable over Apfel in view of Stephens.

CONCLUSION

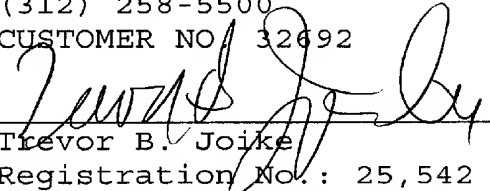
In view of the above, it is clear that the claims of the present application patentably distinguish over the art applied by the Examiner. Accordingly, allowance of these claims and issuance of the above captioned patent application are respectfully requested.

The Commissioner is hereby authorized to charge any additional fees that may be required, or to credit any overpayment, to account No. 50-1519.

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